render value. After the bankruptcy of the insured, his trustee sought to recover the policy or its value. *Held*, that he may not recover either. *Matter of Samuels*, 237 Fed. 796 (Circ. Ct. of App., 2nd Circ.).

Section 70 *a* (5) of the Bankruptcy Act gives to the trustee the property which the bankrupt could have transferred, provided that when the bankrupt has an insurance policy with a surrender value "payable to himself," he may retain the policy, if he pays the surrender value to the trustee, and otherwise the policy passes to the trustee. The construction of this clause might have been that all policies payable to the bankrupt or in which he had the right to change beneficiaries should be considered property which he might have transferred, and that the policies should therefore pass to the trustee, unless they were such as were redeemable and redeemed under the proviso. *In re* Orear, 178 Fed. 632; *In re* Dolan, 182 Fed. 949. See 1 REMINGTON, BANKRUPTCY, 2 ed., §§ 1002, 1009. But as to policies payable to the bankrupt, the Supreme Court has held that they remain the property of the bankrupt and that only the surrender values of those policies which have surrender values pass to the trustee. *Burlington* v. *Crouse*, 228 U. S. 459. The basis of this decision seems to be that no interest in an insurance policy is intended to pass under § 70 *a* (5) unless it comes within the proviso. It might seem to follow that a policy payable to a third person in which the bankrupt could change the beneficiaries is not "payable to the bankrupt" and that consequently its surrender value would not pass under § 70 *a* (5). See 1 REMINGTON, BANKRUPTCY, 2 ed., § 1009. But this would seem to be unduly narrowing an already narrow construction; for, since the bankrupt could make himself beneficiary, the policy is in substance payable to the bankrupt. He should, therefore, get the surrender value under § 70 *a* (5). The same result, it would seem, might be reached under § 70 *a* (3). This gives to the trustee powers which the bankrupt might have exercised for his own benefit. And the right to change beneficiaries certainly seems to be such a power. Possibly, however, it may be held that no interest in an insurance policy can pass under *any* part of the Act except the proviso of § 70 *a* (5). *Cf.* *Burlington* v. *Crouse*, 228 U. S. 459, 472. But the Act seems to give little support to such a construction.

CARRIERS — LIMITATION OF LIABILITY — LIMITATION OF LIABILITY BY AGREED VALUATION. — The defendant, a common carrier, accepted a shipment of goods from the plaintiff of the value of two thousand dollars. The goods being lost, the shipper brings suit alleging that the goods were converted by the servants of the carrier to their own use. The defendant set up the affirmative defense that the contract of shipment valued the goods at fifty dollars and limited the liability of the carrier to that amount. The plaintiff demurred. *Held*, that the contractual limitation is binding and the demurrer should be overruled. *D'Utassy* v. *Barrett*, 56 N. Y. L. J. 1367 (N. Y. Ct. of App.).

In England a common carrier may, by contract, completely exempt itself from liability for loss of goods. *Nicholson* v. *Willan*, 5 East 507. Feeling the danger that the carrier might overreach the shipper, Parliament has provided that the contract must be just and reasonable. *Manchester, etc. Ry.* v. *Brown*, 8 App. Cas. 703. The American courts have, with a single exception, declared that contracts totally exempting carriers from liability for their own negligence are void as against public policy. *Railroad Co.* v. *Lockwood*, 17 Wall. (U. S.) 357; *School District* v. *Boston, etc. Ry. Co.*, 102 Mass. 552; *contra*, *Nelson* v. *Hudson River R. Co.*, 48 N. Y. 498. As to the possibility of contracting for a limited liability in return for a reduction in rates, American courts are divided. To some courts it seems impossible to limit a liability which, on grounds of policy, cannot completely be avoided. *U. S. Express Co.* v. *Backman*, 28 Ohio St. 144; *Black* v. *Goodrich Transportation Co.*, 55 Wis. 319; *Moulton* v. *St. Paul, etc. Ry. Co.*, 31 Minn. 85. To other courts the business sense of allowing a

shipper to get less by paying less caused them to hold valid the limitation of liability to an agreed value. *Graves* v. *Lake Shore, etc. Ry. Co.*, 137 Mass. 33; *Oppenheimer & Co.* v. *U. S. Express Co.*, 69 Ill. 62. See H. E. Willis, "The Right of Bailees to contract against Liability for Negligence," 20 HARV. L. REV. 297, 306. The Federal Supreme Court has, however, held the limitation of liability contracts to be good and, moreover, made the rule the universal one under the Carmack Amendment, so far as loss by negligence is concerned. *Adams Express Co.* v. *Croninger*, 226 U. S. 491; *Boston & Maine Ry. Co.* v. *Hooker*, 233 U. S. 97. Granting that the limitation is valid as applied to negligent acts of the carrier's servants it would not be expedient to differentiate the case where the servant's conduct is made worse only by adding a *mens rea*. But see *The New England*, 110 Fed. 415, 420; *Southern Express Co.* v. *Gutman*, 6 Ky.L. R. 587.

CHOSES IN ACTION — PARTIAL ASSIGNMENT — WHETHER JUDGMENT IN FAVOR OF PARTIAL ASSIGNEE BARS ASSIGNOR. — An unlawfully discharged employee had an unliquidated claim for damages against his employer. The employee assigned such damages as should accrue up to a certain date, and reserved after-accruing damages. The assignee sued the employer in the municipal court and recovered. The assignor now sues the employer at law for the balance of the claim, and the employer pleads in bar the prior judgment recovered by the assignee. *Held*, that the assignor may recover. *Carvill* v. *Mirror Films, Inc.*, 56 N. Y. L. J. 1861 (App. Div.).

At common law, a partial assignee had standing only in equity. See *James* v. *Newton*, 142 Mass. 366, 8 N. E. 122. Nor have modern codes enabling an assignee to sue at law in his own name generally been extended to partial assignees. *In re Stiger*, 202 Fed. 791. But *cf. Skipper* v. *Holloway*, [1910] 2 K. B. 630; *Caledonia Ins. Co.* v. *Northern Pacific Ry. Co.*, 32 Mont. 46, 79 Pac. 544; *Gaugler* v. *Chicago, etc. Ry. Co.*, 197 Fed. 79. In New York, however, the law has undergone an independent development, and seems still unsettled. It has been said, on the one hand, that the only remedy was equitable. *Chambers* v. *Lancaster*, 160 N. Y. 342, 348, 54 N. E. 707, 708; *King* v. *King*, 73 App. Div. 547, 77 N. Y. Supp. 40; *Thompson* v. *Gimbal Bros.*, 71 Misc. 126, 128 N. Y. Supp. 210. Earlier decisions, however, not expressly overruled, allowed the assignee a legal action. *Morton* v. *Naylor*, 1 Hill 583; *Risley* v. *Phenix Bank, etc.*, 83 N. Y. 318, 329; *Chase* v. *Deering*, 104 App. Div. 192, 93 N. Y. Supp. 434. A middle position is to the effect that the assignee may sue at law by joining the assignor as co-plaintiff, and non-joinder is demurrable. *Dickinson* v. *Tyson*, 125 App. Div. 735, 110 N. Y. Supp. 269. On practical grounds this latter doctrine appears the most advantageous. Legal enforcement runs afoul of difficulties of procedure or of policy. Only joint obligees could sue jointly at common law, and a partial assignee was not a joint obligee. If separate actions were allowed, the debtor would be subjected to undue litigation, or else a judgment recovered by an assignee would bar the assignor and other assignees. Yet if the right is purely equitable, the claim is *pro tanto* withdrawn from jury trial, and a later total assignment might arguably cut the assignee off. See Williston, "Is the Right of Assignee of a Chose in Action Legal or Equitable?", 30 HARV. L. REV. 97, 104. It is best, therefore, to treat the right as legal-equitable, the assignor and assignee being equitable tenants in common, and the assignor being legal owner of the share assigned, subject, however, to a legal "power" in the assignee, upon notice to the debtor. See Cook, "Alienability of Choses in Action," 30 HARV. L. REV. 449, 482; Cook, "Alienability of Choses in Action," 29 HARV. L. REV. 816, 820. The liberal tendency to allow joinder of parties whose rights are not technically joint, is instanced also by the joinder at law of tenants-in-common, and co-owners of other separate interests in land. *Cf. School Districts* v. *Edwards*, 46 Wis. 150,